



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1998

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR98-0141

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112176.

The City of Garland (the "city") received an open records request for the personnel files of five police officers. It appears that you have released some of the information at issue. You seek to withhold other portions of the personnel files, which you have marked, pursuant to sections 552.101, 552.102, and 552.117 of the Government Code. You have submitted to this office a single personnel file as being representative of the requested records.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We note at the outset that, pursuant to section 143.089(g) of the Local Government Code, the Garland Police Department's internal personnel files on these police officers are confidential in their entirety and that you have complied with the procedural requirements of section 143.089(g) by referring the requestor to the city's Civil Service Commission. *See generally* Open

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Records Decision No. 562 (1990). We therefore need to specifically address the public nature of only the information contained in the civil service files.

We agree that the information you have marked is confidential under the exceptions you claim and therefore must be withheld from the public. Section 552.117(2) requires that the city withhold its police officers' home address, home telephone number, social security number, and any information revealing whether the police officers have family members. Accordingly, we conclude that these types of information that you have marked must be withheld pursuant to section 552.117(2).

We next discuss the applicability of section 552.102(a) of the Government Code, which protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101. The information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982); 298, 284, 269 (1981); 224 (1979); 169 (1977).

We agree that the information that you have marked is protected by common law privacy under section 552.102 because it reflects the personal financial decisions of the police officers, such as the amounts withdrawn from their paychecks, insurance coverage, and the identities of insurance beneficiaries. *See generally* Open Records Decision Nos. 600 (1992), 545 (1990). Accordingly, the city must withhold these types of information from the public.

You also seek to withhold the police officers' federal W-4 income tax withholding forms. Tax return information is specifically made confidential by federal law. *See* 26 U.S.C. § 6103. Accordingly, the city may not release this type of information to the requestor.

Finally, we note that the Seventy-fifth Legislature amended the Open Records Act by adding section 552.130, which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

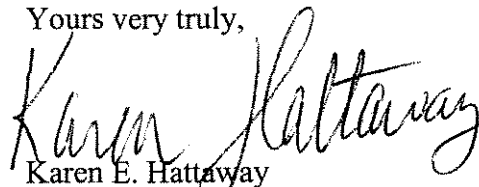
* * * *

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Accordingly, we conclude that the city must withhold the police officers' driver license numbers pursuant to section 552.130 of the Government Code. All remaining information contained in the requested civil service files must be released, except as discussed above.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 112176

Enclosures: Submitted documents

cc: Mr. Royce West
Robinson, West & Gooden, P.C.
400 South Zang Boulevard
Dallas, Texas 75208
(w/o enclosures)